DON COOPS ET AL.

IBLA 81-14, 81-63 Decided February 3, 1982

Appeals from decision of California State Office, Bureau of Land Management, designating certain lands as wilderness study areas. CA-020-1013 and CA-030-504.

Affirmed as to unit CA-020-1013; set aside and remanded as to unit CA-030-504.

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   Where the Bureau of Land Management designates an inventory unit as a wilderness study area, pursuant to sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), the decision will be affirmed in the absence of a showing of compelling reasons for modification or reversal.

2. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   While the Bureau of Land Management may inventory and identify areas of the public lands of less than 5,000 acres as having wilderness characteristics, it may not properly designate such areas as wilderness study areas under sec. 603(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(a) (1976), because that section only mandates review of roadless areas of 5,000 acres or more and roadless islands of the public lands. However, such areas may be managed under the general management authority of sec. 302, 43 U.S.C. § 1732 (1976), in a

manner consistent with wilderness objectives, and such areas may also be recommended for wilderness designation.

3. Federal Land Policy and Management Act of 1976: Inventory and Identification--Federal Land Policy and Management Act of 1976: Wilderness

Where, in assessing the wilderness characteristics of a unit during the intensive inventory, the Bureau of Land Management determines only that the unit in conjunction with adjacent Forest Service land possesses a certain wilderness characteristic, the method of assessment is improper. The Bureau is required to assess whether the unit itself has the requisite characteristic.

APPEARANCES: Don Coops, Ronald E. Vance, and John Weber, pro sese; Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Don Coops, Ronald E. Vance, and John Weber have appealed from a decision of the State Director, California State Office, Bureau of Land Management (BLM), dated August 28, 1980, amending the "Final Intensive Wilderness Inventory Report," published in December 1979, and designating unit CA-020-1013 (Massacre Rim) and unit CA-030-504 (Oroville Lake) as wilderness study areas (WSA's). 1/

The State Director's action was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(a) (1976). That section provides in relevant part that: "[T]he Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 1711(a) of this title as having wilderness characteristics described in the Wilderness Act of September 3, 1964 [16 U.S.C. § 1131 (1976)]." 43 U.S.C. § 1782(a) (1976). From time to time thereafter, the Secretary must report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness. Congress will make the final decision with respect to designating wilderness areas, after a recommendation by the President. 43 U.S.C. § 1782(b) (1976).

The wilderness identification and review undertaken by the State Office pursuant to sections 201(a) and 603(a) of FLPMA have been divided

1/ On Sept. 22, 1980, Don Coops filed an appeal concerning unit CA-020-1013. On Sept. 3, 1980, Ronald E. Vance filed an appeal relating to units CA-020-1013 and CA-030-504. On Sept. 25, 1980, John Weber filed an appeal with respect to unit CA-020-1013.

into three phases by BLM: Inventory, study, and reporting. The State Director's decision marks the end of the inventory phase and the beginning of the study phase.

The key wilderness characteristics, described in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976), which are assessed during the wilderness review process are size, naturalness, and either an outstanding opportunity for solitude or a primitive and unconfined type of recreation. See Wilderness Inventory Handbook (WIH), dated September 27, 1978, at 6.

With regard to unit CA-020-1013, appellants argue that the western portion of the unit is a maze of "roads, fences, windmills, and power lines," and that these "scars of man" could only be removed at great taxpayer expense. They argue that the unit is "scattered" with private land and bordered by roads, private land, and "activities" whose sights and sounds intrude into the unit. They state also that the terrain and vegetation is not conducive to an outstanding opportunity for solitude, being mostly "dry lake beds, expansive flats and low sagebrush." Furthermore, they argue that the scattered private land, necessary access ways, and numerous cross fences restrict unconfined recreation. Finally, they state that the unit is not "unique" and that designation as a WSA only "tie[s] up an area for study that cannot qualify for wilderness." With regard to unit CA-030-504, appellant Vance argues that the unit does not have 5,000 acres or more and, accordingly, is not subject to the wilderness review under section 603(a) of FLPMA.

[1] We will first consider appellants' arguments relating to unit CA-020-1013. In its December 1979 final intensive inventory decision BLM concluded that unit CA-020-1013 should not be designated as a WSA because of a lack of naturalness and the absence of an outstanding opportunity for solitude or primitive and unconfined recreation. The decision was protested and the unit was reassessed. Subsequently, the final intensive inventory decision was amended to designate the unit as a WSA.

With regard to naturalness, the amended report stated:

> The west half of the unit is impacted by numerous ways, [2/] fences and water storage structures. However,

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2/ In order to qualify for further study pursuant to section 603(a) of FLPMA, an area must be "roadless." 43 U.S.C. § 1782(a) (1976). For purposes of determining whether an area is roadless, BLM adopted a definition from H.R. Rep. No. 1163, 94th Cong., 2nd Sess. 17 (1976). The term roadless is defined as "[t]he absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road" (WIH at 5).

While the initial intensive inventory report indicated that the unit contained 4 miles of roads, we must conclude that they have been reclassified as "ways," and that the unit is therefore roadless. Appellants have not submitted any evidence to support their contention that roads as such exist in the unit.

> most of these impacts could reasonably be returned to a somewhat natural condition via hand labor. Most of the eastern half, however, has retained its natural character with only a few low impact intrusions along the periphery. The area is assessed as being mostly natural in character.

Amendments and Clarification to the Final Intensive Wilderness Inventory, August 1980, at 5.

Concerning outstanding opportunities for solitude or a primitive and unconfined type of recreation, the amended report stated:

> Although the unit lacks significant topographic and vegetative diversity, its large size offers outstanding opportunities for solitude. The western portion offers steeper terrain with a few drainages and scattered junipers which provide screening and opportunities to experience a sense of solitude. Although opportunities for primitive and unconfined types of recreation are not exceptional, opportunities nonetheless exist for hiking, horseback riding, rockhounding, exploring, wildlife observation, and antelope/game bird hunting.

Id. at 5.

Section 2(c) of the Wilderness Act, supra, states that the wilderness characteristic of naturalness is applicable where the imprint of man's work is "substantially unnoticeable." (Emphasis added.) 16 U.S.C. § 1131(c) (1976). As we stated in Tri-County Cattlemen's Association, 60 IBLA 305, 309 (1981):

> There is no requirement that the hand of man be completely unnoticeable. Certain man-made structures and marks may be evident in an area without affecting its suitability for preservation as wilderness. See WIH at 12-13. Furthermore, the imprint of man must be viewed in an overall sense in order to assess its impact properly. See WIH at 13.

We believe that BLM took these factors into account in assessing the naturalness of unit CA-020-1013.

Furthermore, BLM also assessed the "possibility of an area returning to a natural condition" as part of the inventory process. See WIH at 14. If it is "reasonable to expect the imprint of man's work to return or be returned to a substantially unnoticeable level either by natural processes or by hand labor" (emphasis added), an area may be further considered for designation as a WSA. WIH at 14.

In Tri-County Cattlemen's Association, supra at 309, we concluded that this is proper because "[d]esignation as a WSA is only a preliminary step to designation of an area for preservation as wilderness." Appellants have failed to establish that BLM erred in its assessment of the naturalness of unit CA-020-1013. Appellants have merely reiterated

their disagreement with BLM's subjective determination. More than simple disagreement with such a determination is necessary to require reversal of BLM's action or place a factual matter at issue. Ruskin Lines, 61 IBLA 193 (1982); Conoco, Inc., 61 IBLA 23 (1981).

In addition, the fact that the unit is scattered with private land or bordered by roads and private land, and that sights and sounds of activities allegedly intrude into the unit do not preclude designation of the unit as a WSA. Outside sights and sounds must be considered during the inventory phase to the extent they might affect an area's wilderness characteristics. City of Colorado Springs, 61 IBLA 124 (1982); Union Oil Co. (On Reconsideration), 58 IBLA 166, 170 (1981). See also Ruskin Lines, supra. However, such activities must be of a significant magnitude, especially with regard to a unit the size of unit CA-020-1013 (110,000 acres), to overcome a finding that the area has an outstanding opportunity for solitude. 3/ Appellants' allegation of the mere presence of such activities will not suffice to disqualify the unit from further study.

The decision to designate an area as a WSA is committed to the discretion of the State Director and will be affirmed in the absence of compelling reasons for modification or reversal. The burden of showing error is on one challenging the decision. City of Colorado Springs, supra; Richard J. Leaumont, 54 IBLA 242, 88 I.D. 440 (1981).

In the present case, appellants have failed to offer compelling reasons for disturbing BLM's assessment of the wilderness characteristics of unit CA-020-1013. They have failed to show that BLM did not consider adequately all of the factors involved. California Association of Four-Wheel Drive Clubs, 38 IBLA 361 (1978).

Unit CA-030-504, likewise, was not designated as a WSA in the December 1979 decision. At that time BLM did not consider the unit to have either an outstanding opportunity for solitude or a primitive and unconfined type of recreation due to its small size (68 acres) and difficult terrain. Following protests the final intensive inventory was amended to designate the unit as a WSA. The amended report stated:

3/ This requirement was discussed in Organic Act Directive (OAD) No. 78-61, Change 3, dated July 12, 1979, at 4:

"Imprints of man outside a unit ('sights and sounds'). Assessing the effects of the imprints of man which occur outside a unit is generally a factor to be considered during study. Imprints of man outside the unit may be considered during inventory only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored [emphasis added], and if not used, reasonable application of inventory guidelines would be questioned. Imprints of man outside the unit, such as roads, highways, and agricultural activity, are not necessarily significant enough to cause their consideration in the inventory of a unit. However even major impacts adjacent to a unit will not automatically disqualify a unit or portion of a unit." (Emphasis in original.)

> When the opportunities for primitive and unconfined recreation and solitude within the inventory unit were assessed, no prominent or distinguishing characteristics were found to be present. Therefore, when considered alone the inventory unit does not provide outstanding opportunities. However, when considered in association with the contiguous RARE II Further Planning unit, [4/] opportunities within the combined units are considered to be outstanding. [Emphasis added.]

Amendments and Clarification to the Final Intensive Wilderness Inventory, August 1980, at 8. Appellant Vance made no allegation that the unit does does not satisfy this wilderness characteristic.

[2] Appellant Vance, however, has challenged designation of unit CA-030-504 as a WSA on the basis that it contains less than 5,000 acres. The record indicates that the unit contains only 68 acres of land, but that it is contiguous with the Bald Rock RARE II Further Planning Wilderness Unit. BLM presumably excepted it from the size requirement of section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976), pursuant to the size exceptions identified in the WIH. See WIH at 3.

The question of whether BLM has the authority to designate an area of less than 5,000 acres as a WSA, pursuant to section 603(a) of FLPMA was discussed at some length in Tri-County Cattlemen's Association, supra. We concluded, initially, that while BLM was required by section 201(a) of FLPMA, 43 U.S.C. § 1711(a) (1976), to identify, during the inventory process, areas of the public lands which exhibit wilderness characteristics, we stated that:

> once the inventory stage is completed, the authority for designation of areas of the public lands as WSA's is derived from section 603(a) of FLPMA. That section directs the Secretary to review only those areas of 5,000 acres or more. Thus, it appears that section 603(a) of FLPMA established a minimum acreage requirement for WSA's. [Emphasis in original.]

Tri-County Cattlemen's Association, supra at 312.

After a review of the legislative history of section 603(a), we held as follows:

> Therefore, we find that section 603(a) of FLPMA, 43 U.S.C. § 1782(a) (1976), does not mandate wilderness

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4/ RARE II is the second wilderness review of Forest Service roadless areas undertaken by the Forest Service pursuant to section 3(a) of the Wilderness Act, 16 U.S.C. § 1132(a) (1976).

> review of non-island areas of roadless public land of less than 5,000 contiguous acres. See Save the Glades Committee, 54 IBLA 215 (1981). This finding raises another question though. It is whether other authority exists which would allow BLM to pursue wilderness review of such areas. We conclude that 43 U.S.C. §§ 1712 and 1732 (1976) provide such authority. Although an area of less than 5,000 contiguous acres would not qualify as a WSA under section 603(a), BLM is not precluded from managing such an area in a manner consistent with wilderness objectives, nor is it prohibited from recommending such an area as wilderness. However, the nonimpairment mandate set forth in section 603(c), 43 U.S.C. § 1782(c) (1976), would not apply to an area of less than 5,000 acres. [Footnotes omitted.]

Tri-County Cattlemen's Association, supra at 314. We also pointed out in that case that our holding was consistent with BLM's Interim Management Guidelines, 44 FR 72013 (Dec. 12, 1979), and with the view of the Solicitor as quoted in Save the Glades Committee, supra at 219 (1981). Id. at 314 n.11 through n.14.

Accordingly, we must hold in the present case that unit CA-030-504 does not qualify as a section 603(a) WSA. Nevertheless, in view of the fact that BLM may pursue wilderness review of the unit as part of its general management authority and because of certain errors detected in the inventory conducted with respect to unit CA-030-504, we wish to make a few additional comments with respect to the inventory itself.

[3] As noted above, BLM concluded in its amended report that while the unit "when considered alone" does not satisfy the outstanding opportunity criterion, when considered "in association with the contiguous RARE II Further Planning unit," it does. This method of assessment was improper. BLM was required to assess, during the inventory process, whether the unit itself had the requisite wilderness characteristics. The reason for this is clear. Section 603(a) requires review of those roadless areas of 5,000 acres or more and roadless islands of the public lands identified during the inventory required by 43 U.S.C. § 1711(a) (1976). Section 1711(a) requires an inventory of all public lands and their resource and other values. For purposes of its use in FLPMA, the term "public lands" is defined as "any land and interest in land owned by the United States within the several states and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership." (Emphasis added.) 43 U.S.C. § 1702(e) (1976). Therefore, in this case it was improper for BLM to consider contiguous Forest Service land in assessing the outstanding opportunity criterion for unit CA-030-504.

In addition, while the amended report indicated that the unit alone did not possess outstanding opportunities, review of the record raises a question whether the outstanding opportunity criterion was properly assessed for the unit itself. In the narrative summary of the wilderness intensive inventory, approved by the State Director on October 31, 1979, there is the following assessment of unit CA-030-504

for outstanding opportunities for solitude or a primitive and unconfined type of recreation at page 3.

> Solitude is available in part of the unit. The portion which lies on the east side below the break of the flattened ridgetop provides solitude from within the unit. The remainder of the unit does not provide an outstanding opportunity for solitude however. Comparison to other parcels of land of like kind within this physiographic province reveal that the area is not outstanding by comparision. [Emphasis added.]

OAD No. 78-61, Change 3 (July 12, 1979), however, provides at page 2: "Each inventory unit must be assessed on its own merits as to whether an outstanding opportunity exists; there must be no comparision among units." (Emphasis in original.) Therefore, it appears that the BLM field person indulged in a comparison rather than assessing the unit on its own merits. The record is unclear concerning whether BLM subsequently reassessed the opportunities of the unit itself without relation to adjacent Forest Service land. Accordingly, we believe the proper procedure is to set aside the BLM decision concerning unit CA-030-504 and remand the case to BLM to reassess the outstanding opportunities for solitude within the unit. If BLM determines that outstanding opportunities are not present in the unit itself, unit CA-030-504 should be eliminated from further wilderness consideration. However, if it determines that outstanding opportunities are present in the unit, BLM may proceed to review the potential for preservation of the unit as wilderness under its general management authority.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as to unit CA-020-1013 and set aside and remanded as to unit CA-030-504.

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Bruce R. Harris
Administrative Judge

We concur:

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Bernard V. Parrette
Chief Administrative Judge

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Edward W. Stuebing
Administrative Judge